

AMENDED IN ASSEMBLY MAY 1, 2012  
AMENDED IN ASSEMBLY MARCH 22, 2012  
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

No. 2028

---

**Introduced by Assembly Members Knight and Smyth**  
**(Coauthors: Assembly Members Achadjian, Bill Berryhill, Conway, Cook, Donnelly, Fletcher, Beth Gaines, Garrick, Grove, Hagman, Halderman, Harkey, Jeffries, Jones, Logue, Mansoor, Miller, Morrell, Nestande, Nielsen, Norby, Olsen, Silva, Valadao, and Wagner)**

February 23, 2012

---

An act to amend Sections 44936, 44938, 44944, and 44945 of, and to add Sections 44932.5 and 44940.7 to, 44944 of the Education Code, relating to school employees.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2028, as amended, Knight. School employees: discipline: suspension and dismissal.

~~(1) Existing law prohibits a permanent school employee from being dismissed except for one or more specified offenses.~~

~~This bill would prohibit a collective bargaining agreement entered into or renewed on or after January 1, 2013, from requiring the removal, after a specified time period, from an employee's record of records pertaining to discipline, complaints, reprimands, or investigations relating to the employee's commission, or potential commission, of one of those specified offenses.~~

~~(2)~~

(1) Existing law authorizes a governing board of a school district to give notice to a permanent employee of its intention to dismiss or suspend him or her for specified causes at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing. Existing law prohibits that notice from being given between May 15th and September 15th in any year.

This bill would remove that prohibition.

~~(3) Existing law prohibits the governing board of a school district from acting upon any charges of unprofessional conduct, or unsatisfactory performance, unless at least 45, or 90, calendar days, respectively, prior to the date of the filing of the charges the governing board, or its authorized representative, has given the employee written notice, as specified.~~

~~This bill would remove those 45-day and 90-day requirements.~~

~~(4) Existing law requires the governing board of a school district to immediately place an employee on compulsory leave of absence if the employee is charged with a mandatory leave of absence offense, as defined.~~

~~This bill would require the governing board to transfer a certificated employee to nonclassroom duties that do not involve contact with pupils if the governing board has reasonable cause to believe that the employee is under investigation by a law enforcement agency for commission of a mandatory leave of absence offense. The bill would require an employee transferred under these provisions to continue to receive his or her regular salary during the period of the transfer. If the governing board returns the employee to classroom duties, the bill would require the governing board to record the reason or reasons for the return in a resolution adopted by the governing board. By placing additional duties on school district governing boards regarding the transfer of employee duties, this bill would impose a state-mandated local program.~~

~~(5)~~

~~(2) Existing law establishes a Commission on Professional Competence for each dismissal or suspension hearing requested by an employee, consisting of specified members. Existing law deems the decision of the Commission on Professional Competence to be the final decision of the governing board of the school district.~~

~~This bill would make various changes to the provisions relating to the hearing, including requiring the Commission on Professional Competence to consist solely of an administrative law judge, as well as providing that the decision of the commission would be advisory,~~

and the final decision regarding the discipline of the employee would be determined by action of the governing board of the school district. The bill would provide that an employee requesting a hearing may be placed on administrative leave without pay, and that an employee who is placed on administrative leave would be required to be paid his or her regular salary if he or she furnishes to the school district acceptable security, as specified.

(6) Existing law prohibits testimony from being given or evidence being introduced at the hearing relating to matters that occurred more than 4 years prior to the date of the filing of the notice of dismissal or suspension.

This bill would remove that 4-year limitation, *and would make nonsubstantive changes.*

(7) This bill would make nonsubstantive and conforming changes.

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: *yes-no.*

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 44932.5 is added to the Education Code,~~  
2     ~~to read:~~

3     ~~44932.5. A collective bargaining agreement entered into or~~  
4     ~~renewed on or after January 1, 2013, shall not require the removal,~~  
5     ~~after a specified time period, from an employee's record of records~~  
6     ~~pertaining to discipline, complaints, reprimands, or investigations~~  
7     ~~relating to the employee's commission, or potential commission,~~  
8     ~~of an offense listed in Section 44932.~~

9     ~~SEC. 2.~~

10    ~~SECTION 1. Section 44936 of the Education Code is amended~~  
11    ~~to read:~~

12    ~~44936. The notice of dismissal or suspension in a proceeding~~  
13    ~~initiated pursuant to Section 44934 shall be in writing and be served~~  
14    ~~upon the employee personally or by United States registered mail~~

1 addressed to the employee at the employee's last known address.  
2 A copy of the charges filed, containing the information required  
3 by Section 11503 of the Government Code, together with a copy  
4 of the provisions of this article, shall be attached to the notice.

5 SEC. 3. ~~Section 44938 of the Education Code is amended to~~  
6 ~~read:~~

7 ~~44938. (a) The governing board of any school district shall~~  
8 ~~not act upon any charges of unprofessional conduct unless the~~  
9 ~~governing board or its authorized representative has given the~~  
10 ~~employee against whom the charge is filed written notice of the~~  
11 ~~unprofessional conduct, specifying the nature of the unprofessional~~  
12 ~~conduct with specific instances of behavior and with particularity~~  
13 ~~as to furnish the employee an opportunity to correct his or her~~  
14 ~~faults and overcome the grounds for the charge. The written notice~~  
15 ~~shall include the evaluation made pursuant to Article 11~~  
16 ~~(commencing with Section 44660) of Chapter 3, if applicable to~~  
17 ~~the employee.~~

18 ~~(b) The governing board of any school district shall not act upon~~  
19 ~~any charges of unsatisfactory performance unless it acts in~~  
20 ~~accordance with the provisions of paragraph (1) or (2):~~

21 ~~(1) The governing board or its authorized representative has~~  
22 ~~given the employee against whom the charge is filed, written notice~~  
23 ~~of the unsatisfactory performance, specifying the nature of the~~  
24 ~~unsatisfactory performance with specific instances of behavior~~  
25 ~~and with particularity as to furnish the employee an opportunity~~  
26 ~~to correct his or her faults and overcome the grounds for the charge.~~  
27 ~~The written notice shall include the evaluation made pursuant to~~  
28 ~~Article 11 (commencing with Section 44660) of Chapter 3, if~~  
29 ~~applicable to the employee.~~

30 ~~(2) The governing board may act during the time period~~  
31 ~~composed of the last one-fourth of the schooldays it has scheduled~~  
32 ~~for purposes of computing apportionments in any fiscal year if,~~  
33 ~~before the beginning of that time period, the governing board or~~  
34 ~~its authorized representative has given the employee against whom~~  
35 ~~the charge is filed written notice of the unsatisfactory performance,~~  
36 ~~specifying the nature of the unsatisfactory performance with~~  
37 ~~specific instances of behavior and with particularity as to furnish~~  
38 ~~the employee an opportunity to correct his or her faults and~~  
39 ~~overcome the grounds for the charge. The written notice shall~~

1 include the evaluation made pursuant to Article 11 (commencing  
2 with Section 44660) of Chapter 3, if applicable to the employee.

3 (e) (1) ~~“Unprofessional conduct” as used in this section means;~~  
4 ~~and refers to, the unprofessional conduct particularly specified as~~  
5 ~~a cause for dismissal or suspension in Sections 44932 and 44933~~  
6 ~~and does not include any other cause for dismissal specified in~~  
7 ~~Section 44932.~~

8 (2) ~~“Unsatisfactory performance” as used in this section means;~~  
9 ~~and refers only to, the unsatisfactory performance particularly~~  
10 ~~specified as a cause for dismissal in Section 44932 and does not~~  
11 ~~include any other cause for dismissal specified in Section 44932.~~

12 SEC. 4. ~~Section 44940.7 is added to the Education Code, to~~  
13 ~~read:~~

14 ~~44940.7. (a) The governing board shall transfer a certificated~~  
15 ~~employee to nonclassroom duties that do not involve contact with~~  
16 ~~pupils if the governing board has reasonable cause to believe that~~  
17 ~~the employee is under investigation by a law enforcement agency~~  
18 ~~for commission of a mandatory leave of absence offense within~~  
19 ~~the meaning of subdivision (a) of Section 44940.~~

20 ~~(b) An employee transferred pursuant to this section shall~~  
21 ~~continue to receive his or her regular salary during the period of~~  
22 ~~the transfer.~~

23 ~~(c) If the governing board returns the certificated employee to~~  
24 ~~classroom duties that involve contact with pupils, the governing~~  
25 ~~board shall record the reason or reasons for the return in a~~  
26 ~~resolution adopted by the governing board.~~

27 SEC. 5.

28 SEC. 2. Section 44944 of the Education Code is amended to  
29 read:

30 44944. (a) (1) In a dismissal or suspension proceeding initiated  
31 pursuant to Section 44934, if a hearing is requested by the  
32 employee, the hearing shall be commenced within 60 days from  
33 the date of the employee’s demand for a hearing. The hearing shall  
34 be initiated, conducted, and a decision made in accordance with  
35 Chapter 5 (commencing with Section 11500) of Part 1 of Division  
36 3 of Title 2 of the Government Code. However, the hearing date  
37 shall be established after consultation with the employee and the  
38 governing board, or their representatives, and the Commission on  
39 Professional Competence shall have all of the power granted to  
40 an agency in that chapter, except that the right of discovery of the

1 parties shall not be limited to those matters set forth in Section  
2 11507.6 of the Government Code but shall include the rights and  
3 duties of any party in a civil action brought in a superior court  
4 under Title 4 (commencing with Section 2016.010) of Part 4 of  
5 the Code of Civil Procedure. Notwithstanding any provision to the  
6 contrary, and except for the taking of oral depositions, no discovery  
7 shall occur later than 30 calendar days after the employee is served  
8 with a copy of the accusation pursuant to Section 11505 of the  
9 Government Code. In all cases, discovery shall be completed prior  
10 to seven calendar days before the date upon which the hearing  
11 commences. If any continuance is granted pursuant to Section  
12 11524 of the Government Code, the time limitation for  
13 commencement of the hearing as provided in this subdivision shall  
14 be extended for a period of time equal to the continuance. However,  
15 the extension shall not include that period of time attributable to  
16 an unlawful refusal by either party to allow the discovery provided  
17 for in this section.

18 (2) If the right of discovery granted under paragraph (1) is  
19 denied by either the employee or the governing board, all of the  
20 remedies in Chapter 7 (commencing with Section 2023.010) of  
21 Title 4 of Part 4 of the Code of Civil Procedure shall be available  
22 to the party seeking discovery, and the court of proper jurisdiction  
23 to entertain his or her motion shall be the superior court of the  
24 county in which the hearing will be held.

25 (3) The time periods in this section and of Chapter 5  
26 (commencing with Section 11500) of Part 1 of Division 3 of Title  
27 2 of the Government Code and of Title 4 (commencing with  
28 Section 2016.010) of Part 4 of the Code of Civil Procedure shall  
29 not be applied so as to deny discovery in a hearing conducted  
30 pursuant to this section.

31 (4) The superior court of the county in which the hearing will  
32 be held may, upon motion of the party seeking discovery, suspend  
33 the hearing so as to comply with the requirement of paragraph (3).

34 (5) A witness shall not be permitted to testify at the hearing  
35 except upon oath or affirmation.

36 (b) (1) The hearing provided for in this section shall be  
37 conducted by a Commission on Professional Competence, ~~which~~  
38 ~~shall consist solely of.~~ *One member of the commission shall be*  
39 *selected by the employee, one member shall be selected by the*  
40 *governing board, and one member shall be an administrative law*

1 judge of the Office of Administrative Hearings who shall be  
2 ~~responsible for ensuring the chairperson and a voting member of~~  
3 ~~the commission and shall be responsible for assuring that the legal~~  
4 rights of the parties are protected at the hearing. *If either the*  
5 *governing board or the employee, for any reason, fails to select a*  
6 *commission member at least seven calendar days before the date*  
7 *of the hearing, the failure shall constitute a waiver of the right to*  
8 *selection, and the county board of education or its specific designee*  
9 *shall immediately make the selection. If the county board of*  
10 *education is also the governing board of the school district or has*  
11 *by statute been granted the powers of a governing board, the*  
12 *selection shall be made by the Superintendent, who shall be*  
13 *reimbursed by the school district for all costs incident to the*  
14 *selection.*

15 (2) *The member selected by the governing board and the member*  
16 *selected by the employee shall not be related to the employee and*  
17 *shall not be employees of the school district initiating the dismissal*  
18 *or suspension and shall hold a currently valid credential and have*  
19 *at least five years' experience within the past 10 years in the*  
20 *discipline of the employee.*

21 (c) (1) *The decision of the Commission on Professional*  
22 *Competence shall be made by a majority vote, and the commission*  
23 *shall prepare a written decision containing findings of fact,*  
24 *determinations of issues, and a disposition that shall be, solely,*  
25 *one of the following:*

26 (A) *That the employee should be dismissed.*

27 (B) *That the employee should be suspended for a specific period*  
28 *of time without pay.*

29 (C) *That the employee should not be dismissed or suspended.*

30 (2) *The decision of the commission that the employee should*  
31 *not be dismissed or suspended shall not be based on nonsubstantive*  
32 *procedural errors committed by the school district or governing*  
33 *board unless the errors are prejudicial errors.*

34 (3) *The commission shall not have the power to dispose of the*  
35 *charge of dismissal by imposing probation or other alternative*  
36 *sanctions. The imposition of suspension pursuant to subparagraph*  
37 *(B) of paragraph (1) shall be available only in a suspension*  
38 *proceeding authorized pursuant to subdivision (b) of Section 44932*  
39 *or Section 44933.*

1 (4) The decision of the commission shall be ~~advisory, and~~  
2 ~~deemed to be the final decision regarding the discipline of the~~  
3 ~~employee shall be determined by action of the governing board of~~  
4 ~~the school district.~~

5 (5) The governing board may adopt from time to time rules and  
6 procedures not inconsistent with this section as may be necessary  
7 to effectuate this section.

8 (6) The governing board and the employee shall have the right  
9 to be represented by counsel.

10 (d) (1) ~~If the governing board determines~~ *member selected by*  
11 *the governing board or the member selected by the employee is*  
12 *employed by a school district in this state, the member shall, during*  
13 *any service on a Commission on Professional Competence,*  
14 *continue to receive salary, fringe benefits, accumulated sick leave,*  
15 *and other leaves and benefits from the district in which the member*  
16 *is employed, but shall receive no additional compensation or*  
17 *honorariums for service on the commission.*

18 (2) *If service on a commission occurs during summer recess or*  
19 *vacation periods, the member shall receive compensation*  
20 *proportionate to that received during the current or immediately*  
21 *preceding contract period from the member's employing district,*  
22 *whichever amount is greater.*

23 (e) (1) *If the Commission on Professional Competence*  
24 *determines that the employee should be dismissed or suspended,*  
25 *the governing board and the employee shall share equally the*  
26 *expenses of the hearing, including the cost of the administrative*  
27 *law judge. The state shall pay any costs incurred under paragraph*  
28 *(2) of subdivision (d), the reasonable expenses, as determined by*  
29 *the administrative law judge, of the member selected by the*  
30 *governing board and the member selected by the employee,*  
31 *including, but not limited to, payments or obligations incurred for*  
32 *travel, meals, and lodging, and the cost of the substitute or*  
33 *substitutes, if any, for the member selected by the governing board*  
34 *and the member selected by the employee. The Controller shall*  
35 *pay all claims submitted pursuant to this paragraph from the*  
36 *General Fund, and may prescribe reasonable rules, regulations,*  
37 *and forms for the submission of the claims. The employee and the*  
38 *governing board shall pay their own attorney's fees.*

39 (2) ~~If the governing board~~ *commission determines that the*  
40 *employee should not be dismissed or suspended, the governing*



1 board shall pay the expenses of the hearing, including the cost of  
2 the administrative law judge, *any costs incurred under paragraph*  
3 *(2) of subdivision (d), the reasonable expenses, as determined by*  
4 *the administrative law judge, of the member selected by the*  
5 *governing board and the member selected by the employee,*  
6 *including, but not limited to, payments or obligations incurred for*  
7 *travel, meals, and lodging, the cost of the substitute or substitutes,*  
8 *if any, for the member selected by the governing board and the*  
9 *member selected by the employee, and reasonable attorney's fees*  
10 *incurred by the employee.*

11 (3) ~~If the~~ As used in this section, "reasonable expenses" shall  
12 not be deemed "compensation" within the meaning of subdivision  
13 (d).

14 (4) If either the governing board or the employee petitions a  
15 court of competent jurisdiction for review of the decision of the  
16 ~~governing board, commission,~~ the payment of expenses to ~~the~~  
17 ~~administrative law judge members of the commission~~ required by  
18 this subdivision shall not be stayed.

19 ~~(4)~~

20 (5) (A) If the decision of the ~~governing board~~ commission is  
21 finally reversed or vacated by a court of competent jurisdiction, ~~the~~  
22 ~~employee,~~ *either the state, having paid the commission members'*  
23 *expenses, shall be entitled to reimbursement from the governing*  
24 *board for those expenses, or the governing board, having paid the*  
25 *expenses, shall be entitled to reimbursement from the state.*

26 (B) Additionally, *either the employee, having paid a portion of*  
27 *the expenses of the hearing, including the cost of the administrative*  
28 *law judge, shall be entitled to reimbursement from the governing*  
29 *board for the expenses, or the governing board, having paid its*  
30 *portion and the employee's portion of the expenses of the hearing,*  
31 *including the cost of the administrative law judge, shall be entitled*  
32 *to reimbursement from the employee for that portion of the*  
33 *expenses.*

34 ~~(e)~~

35 (f) The hearing provided for in this section shall be conducted  
36 in a place selected by agreement *among the members of the*  
37 *commission.* In the absence of agreement, the place shall be  
38 selected by the administrative law judge.

1     ~~(f) (1) For the duration of the hearing conducted pursuant to~~  
2 ~~this section, the employee may be placed on administrative leave~~  
3 ~~without pay.~~

4     ~~(2) If an employee is placed on administrative leave pursuant~~  
5 ~~to this section, the employee shall continue to be paid his or her~~  
6 ~~regular salary during the period of his or her administrative leave~~  
7 ~~of absence if during that time he or she furnishes to the school~~  
8 ~~district a suitable bond or other security acceptable to the governing~~  
9 ~~board, as a guarantee that the school district will be repaid the~~  
10 ~~amount of salary during the employee's leave of absence if, by~~  
11 ~~action of the governing board, a final decision is made to terminate~~  
12 ~~the employee, or the employee fails or refuses to return to service~~  
13 ~~following a decision not to terminate the employee. If the~~  
14 ~~governing board determines that the employee should not be~~  
15 ~~dismissed, the governing board shall reimburse the employee for~~  
16 ~~the cost of the bond upon his or her return to service in the school~~  
17 ~~district.~~

18     ~~(3) If the employee prevails at the hearing, the administrative~~  
19 ~~law judge may recommend a suitable compensatory remedy,~~  
20 ~~including back wages and benefits, which the governing board~~  
21 ~~may adopt if the employee is reinstated. An employee who is~~  
22 ~~reinstated pursuant to this section, either by the governing board~~  
23 ~~or by order of a court of competent jurisdiction, is entitled to~~  
24 ~~reasonable back wages and benefits.~~

25     ~~SEC. 6. Section 44945 of the Education Code is amended to~~  
26 ~~read:~~

27     ~~44945. The decision of the governing board may, on petition~~  
28 ~~of the employee, be reviewed by a court of competent jurisdiction~~  
29 ~~in the same manner as a decision made by a hearing officer under~~  
30 ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division~~  
31 ~~3 of Title 2 of the Government Code. The court, on review, shall~~  
32 ~~exercise its independent judgment on the evidence. The proceeding~~  
33 ~~shall be set for hearing at the earliest possible date and shall take~~  
34 ~~precedence over all other cases, except older matters of the same~~  
35 ~~character and matters to which special precedence is given by law.~~

36     ~~SEC. 7. If the Commission on State Mandates determines that~~  
37 ~~this act contains costs mandated by the state, reimbursement to~~  
38 ~~local agencies and school districts for those costs shall be made~~

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

O